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PUBLIC HEARING
ON
FEDERAL CONSISTENCY CERTIFICATION
FOR
KING WILLIAM RESERVOIR-REGIONAL RAW WATER SUPPLY PLAN
FOR LOWER PENINSULA
SUBMITTED BY
THE CITY OF NEWPORT NEWS
HELD AT
WILLIAMSBURG COMMUNITY BUILDING
401 NORTH BOUNDARY STREET
WILLIAMSBURG, VIRGINIA
7:00 P.M. WEDNESDAY OCTOBER 20, 2004

CRANE-SNEAD & ASSOCIATES, INC.
4914 Fitzhugh Avenue
Richmond, Virginia 23230
(804) 355-4335

1 MS. IRONS: Good evening. It is now 7:08 p.m.
2 October 20, 2004. I have now called this hearing to
3 order. My name is Ellie Irons and I will be presiding
4 over the hearing this evening.

5 This public hearing, being held in the City of
6 Williamsburg Community Building, is allowed under the
7 public participation requirement of the Coastal Zone
8 Management Act of 1972 (CZMA), as amended. Pursuant
9 to this Act, the Department of Environmental Quality
10 (DEQ) is coordinating the review of the federal
11 consistency certification submitted by the City of
12 Newport News pertaining to the King William Reservoir-
13 Regional Raw Water Supply Plan for Lower Peninsula.

14 As provided by Section 306(d)(14) of the
15 CZMA, DEQ is seeking public comment on the Applicant's
16 consistency certification. Notice of this meeting was
17 published in the September 29, 2004 edition of the
18 Tidewater Review and the September 23 edition of the
19 Richmond Times Dispatch. Notice of this meeting is
20 also published on DEQ's web site.

21 The project involves the construction of a
22 reservoir to supply water to several jurisdictions in
23 the Lower Peninsula region. The Applicant's preferred
24 alternative is the King William Reservoir - a proposed
25 1,526 acre public water storage impoundment on Cohoke

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1 Creek, a tributary of the Pamunkey River located
2 between the Pamunkey and Mattaponi Rivers in King
3 William County. The Applicant proposes pumping water
4 from the Mattaponi River to the reservoir. The
5 following jurisdictions are included in the regional
6 study area for this project: Cities of
7 Hampton, Newport News, Poquoson, and Williamsburg, and
8 the counties of James City and York.

9 During this proceeding, oral statements
10 pertaining to the consistency of this proposal with
11 Virginia's Coastal Resources Management Program are
12 welcome. In addition, written comments concerning
13 this consistency certification may be submitted until
14 the end of the public comment period which extends
15 until Friday, October 29, 2004. Written comments must
16 be sent to Ellie Irons, Department of Environmental
17 Quality, Office of Environmental Impact Review, 629
18 East Main Street, Richmond, Virginia 23219.

19 Please note that when you entered this evening,
20 you were asked to register if you wished to speak for
21 the record. If you have not registered to speak and
22 you wish to enter your comments into the record, I
23 invite you to register to speak at this time. Those
24 persons who registered to speak will be heard first.
25 If you registered to speak, but have since decided not

1 to speak, you may give your allotted speaking time to
2 another person. Those persons who do not wish to
3 speak but wish to be registered as present, please do
4 so on the appropriate register. The register is
5 maintained as part of the official record of this
6 proceeding.

7 Before beginning your comments, please state your
8 name and affiliation if appropriate and who you
9 represent. A court reporter is present and the oral
10 comments of each speaker will be entered into the
11 transcript as a part of the official record of this
12 proceeding. If any person wishes to submit a written
13 statement in addition to oral comments, please be sure
14 that the copy of the statement is appropriately marked
15 and identified and placed on the table before me after
16 you have concluded your comments.

17 I will now begin by calling on those persons who
18 have registered to speak. Again, before beginning
19 your comments, please remember to state your name and
20 affiliation in order to identify each speaker in the
21 transcript of the this proceeding. Also please limit
22 your comments to a maximum of 5 minutes for those

23 representing an organization and 2 minutes for
24 individual speakers in order to ensure that all those
25 who are present and have registered to speak will have

1 an opportunity to do so. I think we have over 80
2 people registered to speak. Some have donated their
3 time to others.

4 We will begin first with the dignitaries present
5 and Mr. Murphy will call those in order. We also have
6 a written statement from Delegate Morgan and
7 Mr. Murphy will read that into the record.

8 The first person will be Chief Carl Custalow.
9 Will you please come to the podium at this time?

10 CHIEF CUSTALOW: Good evening. My name is Carl
11 Custalow and I'm the Chief of the Mattaponi Indian
12 Tribe located in King William County. This evening I
13 speak on the tribe's behalf. I understand the DEQ has
14 requested the comments be directed to specific
15 policies of the Commonwealth Coastal Management Plan.
16 My focus is on the Commonwealth's management policy.

17 I do not believe the King William reservoir
18 project complies with this policy because it will
19 destroy the shad population in the Mattaponi River.
20 As the tribe will depend on the American shad in the
21 Mattaponi River for food, income, and most
22 importantly, our cultural identity. The river has
23 been the center of our community for centuries. We
24 continue to fish for shad in the traditional ways our
25 ancestors did hundreds of years ago. We also operate

1 a shad hatchery that supplies us with jobs and
2 replenishes the shad stocks in the river.

3 The river is more than a source of food and money
4 for the tribe. The river and the shad are the basis
5 of our culture and traditions. I have fished for shad
6 in the Mattaponi River since I was a small boy. Every
7 winter and spring through the spawning season, I and
8 other tribal members catch female shad, fertilize
9 their eggs, and raise young fry in our hatchery. I
10 have seen the river in wet seasons and dry, during
11 good shad seasons and bad shad seasons.

12 The river has a delicate, balanced ecosystem, and
13 the King William reservoir project, which as you know,
14 calls for building a huge intake pipe in the middle of
15 the river, which will undo the balance. The intake
16 pipe will withdraw from one-third of the river's flow
17 from the most productive shad spawning area in the
18 entire Chesapeake region. As you know, the
19 Commonwealth has imposed a fishing moratorium on shad
20 because the population is so depleted now. The
21 withdrawal of so much fresh water could well alter the
22 river's salinity at one of the Commonwealth's most
23 important shad breeding ground. Shad are very
24 sensitive to changes in salinity.

25 A change in the river's salinity will disrupt

1 adult spawning behavior, change adult migratory
2 pattern, and damage the marsh plain where young shad
3 feed and seek shelter from predators.

4 Although the City received a permit to build the
5 intake pipe for the reservoir in the Mattaponi River
6 this summer, the permit was based on inadequate
7 information about the intake pipe's effect on the
8 salinity, and, therefore, on shad.

9 In its application, the VMRC and the City relied
10 on a one dimensional salinity model that does not give
11 an adequate description of the effect of the intake
12 structure on the river because it ignored the fact
13 that the Mattaponi River is divided into two layers of
14 water: The fresh and salt. Even now the City has
15 still not performed the multisalinity model required
16 by the terms of the Virginia Protection Permit. Until
17 it does, it cannot demonstrate that the intake
18 structure will not harm the river's population and the
19 DEQ cannot certify the project's consistency with the
20 Commonwealth's fishery and management policy.

21 I know the City has said in its consistency
22 application that the King William reservoir will not
23 result in the destruction of any fish. That simply is
24 not the case. Even with the pumping hiatus imposed by
25 the VMRC, the City's intake structure is authorized

1 to destroy as much as 3 percent of any shad. Allowing
2 the City to kill so many young shad when the shad
3 population is already so depleted runs the risk that
4 the population will never recover to sustainable
5 levels.

6 In addition, the pumping hiatus requirement can
7 be lifted whenever there is a water emergency. Having
8 fished on the river during these times, I can tell you
9 that this is exactly when the shad needs the fresh
10 water the most. The shad population could be
11 decimated in a single dry season if the hiatus is
12 lifted especially given the fragile nature of the
13 Commonwealth's shad population. DEQ cannot certify
14 that the King William Reservoir Project is consistent
15 with the fisheries management policy.

16 The King William reservoir project is
17 also inconsistent with the advisory policy on
18 underwater historic properties. The reservoir will
19 flood over 89 sites that may be eligible for listing
20 in the National Register of Historic Places.
21 Countless more important sites may be found on the
22 wetlands mitigation sites that the City proposes to
23 use. The places have tremendous emotional and
24 symbolic significance for the tribe, not only have
25 they been important to us for centuries, but also

1 because they represent some of the last remaining
2 physical links we have with our ancestors. Other
3 sites have already been wiped out by development from
4 hundreds of years of encroachment. If the King
5 William reservoir is built, we will lose an historic
6 and cultural heritage that these sites represent.

7 As the City knows, it is the tribe's consistent
8 position that neither the Section 106 process under
9 the National Historic Preservation Act or any other
10 measure can mitigate the loss of this heritage.
11 Thank you, very much.

12 MS. IRONS: Thank you. Our next speaker is
13 retired Colonel Douglas Haller.

14 MR. HALLER: Good evening. Thank you. My name
15 is Doug Haller. I am here representing the Peninsula
16 Citizens for Fair Play on Water. I'm retired here in
17 Williamsburg from being District Engineer for the
18 Norfolk District of the Army Corps of Engineers. I'm
19 speaking on behalf of Colonel Frederick Mueller, who
20 is also a retired district engineer in Rock Island,
21 and for Colonel Robert Reardon, who is also retired as
22 District Engineer from the Norfolk district.
23 Colonel Reardon served in that position in late 1990
24 when the King William Reservoir Project was before the
25 Norfolk district.

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1 In addition to commanding Corps of Engineers
2 Districts, we have served as Deputy District
3 engineers. Fritz Mueller, who is here with me over to
4 my left, also served as Resident Member of the Corps
5 of Engineers Board of Rivers and Harbors at Corps
6 headquarters.

7 We have a combined total of over 88 years of
8 service in the Corps of Engineers. The point is that
9 in our service, in the Corps of Engineers and
10 especially as District Engineers, we reviewed and
11 served as decision makers on many water related civil
12 works projects with their related environmental
13 issues. In all of these cases, we had to balance the
14 public interest in terms of benefits against the
15 potential effects on our environment. We are all
16 familiar with the King William reservoir. Colonel
17 Reardon has first-hand involvement, but Colonel
18 Mueller and I have involved ourselves in the details
19 of it for two reasons.

20 First, our career experience make it of interest
21 to us. Second, because we chose to retire on the
22 Peninsula. This is our water supply along with a half
23 million other residents we're talking about.

24 A reliable supply of quality drinking water is
25 essential to maintain quality of life in a growing

1 region like ours, but not at the expense of harming
2 the very environment that contributes to that
3 desirable quality of life. So, all three of us still
4 find ourselves looking at both sides of the scale to
5 balance need and benefits against impact.

6 The three of us share an opinion on the King
7 William reservoir. We believe that the raw water
8 study group headed by the City of Newport News through
9 its Waterworks, which serves most of the
10 Peninsula, has successfully made its case for the
11 reservoir.

12 By that we mean it has quantified that its
13 existing supply is inadequate as the Virginia
14 Department of Health has warned. The Health
15 Department predicts a deficit in 2015 during severe
16 drought. This would mean increasingly frequent
17 periods of water restriction. Further, the Regional
18 Raw Water Study Group has had its demand growth
19 projections verified by every third-party analysis
20 that has been performed.

21 To be sure, there are differences of opinion
22 about when demand will exceed supply. It does not
23 matter whether you need significant additional water
24 supply by 2020 or 2030. The point is, if you need it
25 in that timeframe, now is the time when you must

1 develop a suitable new source.

2 A proven workable solution is a water storage
3 facility that saves excess water from high surface
4 flows for later use. But in Tidewater, it is
5 difficult to find many sites that are suitable for
6 large reservoirs. Yet, a larger reservoir that serves
7 the need, not a single locality, is the best approach.
8 The King William site meets this test.

9 But what about its impact on the environment?
10 Any large water project is going to have impact. The
11 question is, has the region done everything to avoid
12 those impacts and to minimize and mitigate impact that
13 cannot be avoided. We believe that the King William
14 reservoir project has. This is not just the opinion
15 of three retired Army Corps of Engineers, District
16 Engineers. Our opinion is supported by the
17 Commonwealth of Virginia's environmental protection
18 agencies. Their opinions are in the form of approved

19 Virginia water protection permit and more recently a
20 bottomlands permit from the Virginia Marine Resources
21 Commission.

22 The project has cleared every state hurdle except
23 your certification of compliance to the Army Corps of
24 Engineers that the project satisfies all of the
25 enforceable policies of the Commonwealth's Coastal

1 Zone Management Program.

2 We're convinced that the project is in
3 compliance. We urge you to certify it as such and
4 send it to the Army Corps of Engineers for final
5 disposition of its required federal permit.

6 This project has been studied extensively, more
7 so than most projects. The more it has been
8 investigated by qualified professionals, the more
9 clear and certain the validity of this solution has
10 become. Thank you.

11 MS. IRONS: Thank you. Our next speaker is Tyla
12 Matteson, who is representing Congresswoman Jo Ann
13 Davis.

14 MS. MATTESON: I'm reading a statement from U.S.
15 Congresswoman Jo Ann Davis of Congressional District 1
16 and she says: I regret not being able to attend this
17 evening due to a prior commitment. However, I remain
18 in opposition to the proposed King William reservoir,
19 and stand with the Mattaponi tribe honoring the Treaty
20 of 1677. The King William reservoir project would
21 violate Native American rights whose heritage dates
22 back to Powhatan and Pocahontas.

23 I was saddened by the reversal of the Virginia
24 Marine Resources Commission's decision this August,
25 which gave a permit for the intake pipes on the

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1 Mattaponi. I believe that there are viable
2 alternatives for meeting future water needs, such as
3 deepening the existing reservoirs that Newport News
4 operates.

5 I believe that the King William reservoir project
6 should be found inconsistent with enforceable policies
7 of Virginia's Coastal Resource Management Program
8 based on research by scientific experts at the
9 Virginia Institute of Marine Science, VMRC staff and
10 others who believe that there will be irreparable harm
11 to the wetlands and fisheries stretching from the
12 Mattaponi River to the Chesapeake Bay.

13 I believe that the wetland mitigation plan needs
14 to be submitted and given ample time for review by the
15 citizens and experts before a consistency
16 certification is issued and the October 29 deadline
17 should be lifted and rescheduled.

18 Thank you, very much.

19 MS. IRONS: Thank you. Mr. Murphy will read into
20 the record a letter from Delegate Morgan.

21 MR. MURPHY: Letter to Ms. Ellie Irons dated
22 October 19, 2004. (Reading.) Dear Ms. Irons, as you
23 are aware, the City of Newport News' King William
24 reservoir project is the most significant and most
25 destructive development proposal currently under

1 review by Virginia's natural resource agencies. The
2 controversy surrounding this project has escalated
3 over the years, given the number of citizens,
4 particularly those in the Middle Peninsula of
5 Virginia, who oppose the project. Knowing that, I
6 sincerely appreciate the opportunity provided by DEQ
7 Virginia Department of Environmental Quality for
8 public comment during the October 20 hearing.
9 Unfortunately, I will be out-of-town on business;
10 therefore, I wish to have the following comments read
11 into the record in my absence.

12 Since the State Water Control Board issued a
13 permit to the City of Newport News in 1997, seven
14 years ago, much new information regarding available
15 alternatives, project need, and environmental impacts
16 has come to light. In addition, the project proposal
17 itself has been revised substantially since issuance
18 of the Virginia Water Protection Permit. As part of
19 its review for consistency with Virginia's Coastal
20 Resources Program, I urge the Department to undertake
21 an exhaustive evaluation of the anticipated impacts to
22 such resources as wetlands, fisheries, bottomlands,
23 and wildlife. In doing so, the Department will have
24 to consider the revised project and new information.

25 Of particular note is the fact that since

1 recommendation of its staff and fisheries experts at
2 the Virginia Institute of Marine Science, who maintain
3 that the location of the proposed intake is simply the
4 worst possible site for American shad.

5 The impact of the Commission's decision may not
6 be fully understood until eight years of study on the
7 dependence of American shad on the Mattaponi River is
8 complete. At that point, it will be too late to turn
9 back.

10 The City also continues to minimize, at best or
11 at worst, ignore the exhaustive analysis of
12 environmental impacts prepared by the Norfolk District
13 Corps of Engineers in its 2001 recommended Record of
14 Decision. The Corps' findings contradict many of the
15 conclusions reached by the City. As an example, the
16 Corps determined that the proposed wetlands mitigation
17 plan would fail to reach a no net loss of both wetland
18 acreage and function. Yet the City falsely continues
19 to maintain that the project will be a net gain to the
20 environment.

21 In light of these substantial contradictions, a
22 revised project proposal, and new information on both
23 need and environmental concerns, I urge the Department
24 to render a decision based not on what the City
25 proposed and what information was available in 1997,

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1 but based upon a thorough evaluation of the project as
2 currently designed and in consideration of expert
3 findings articulated over the last seven years. Upon
4 completing such a review, I am confident that the
5 Department will determine that the King William
6 reservoir project is not consistent with the
7 Virginia's Coastal Resources Program. Sincerely,
8 Harvey B. Morgan.

9 MS. IRONS: Thank you.

10 MR. MURPHY: That concludes, to the best of our
11 knowledge, everyone that requested dignitary status if
12 I am allowed to use that term this evening.

13 Have I missed any elected officials? Anyone else
14 have a letter that they were asked to read in?

15 If not, I would like to begin with the
16 individuals that have indicated their position that
17 they do not believe this project is consistent with
18 the Virginia's Coastal Resources Management
19 Program and policies.

20 My indication that another, Linwood Custalow
21 would be going next; is that correct? .

22 MS. IRONS: Yes.

23 MR. MURPHY: How much time are you going to need?

24 MS. IRONS: 15 people donated time to you.

25 DR. CUSTALOW: I'm Dr. Linwood Custalow. I'm a

1 Doctor of Medicine and I've been double boarded in
2 surgery and allergies and another in environmental
3 medicine. Environmental medicine itself deals with
4 our environment, our changes in our environment, and
5 the things that are happening in our environment that
6 makes the human being sick.

7 With that I would like to start and tell you,
8 give you my opinion that I am opposed to the
9 reservoir. I am opposed to the various things that
10 are happening, and the approval of the permits for the
11 reservoir. I want to give you my reasons for that.

12 First, at the other meeting, and I wanted to give
13 my reasons at the other meeting, but they only allowed
14 three minutes and I could not do it in three minutes
15 and there was no sense in trying.

16 So, filtration -- they went from that to
17 disconcern for the river; instead of studying what
18 damage it will make to the river and the damage of the
19 shad. That's not consistent with research. I've done
20 research myself and I know the first thing you have to
21 do is you have to take research step wise. You don't
22 go into deciding, as I said, you haven't studied first
23 what damage pulling a certain amount of water, 85 to
24 90 million gallons per day, and what damage would
25 that do to the river itself. If the river dies, if

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1 you kill the river, you kill everything in it, not
2 just the shad. You can't limit this exclusively to
3 the shad. That's the first step and the first
4 question you need to answer.

5 Secondly, after you've answered that and passed
6 that, then you move on to the selection of filter and
7 what damage will that have to the shad. They skipped
8 the most important one in going to that. I was
9 shocked about that. I wish to basically address that
10 they have not assessed the damage to the river yet.
11 They need to back up about one step first. You do not
12 send-- and this engineer recognized himself that you
13 do not send a rocket out into space loaded with people
14 before you first test the rocket in space and see what
15 it's going to do. That's important. That's basic
16 research across the board. There are steps you have
17 to follow.

18 With that, I would like to mention also the
19 next, from the steps, is what will happen to the
20 river? They mentioned that they will not pull water
21 out during dry seasons because they recognize in dry
22 seasons though the river has its normal tidal flow of
23 seven hours out and five hours in, in a sweeping
24 fashion, like sweeping the broom on a floor. You can
25 take those tidal waves and swing them back and forth

1 all you want, it's still when there is no water
2 draining into the river from a drought for three or
3 four weeks, there's no out flow. We know that because
4 there's a diffusion of water coming up.

5 By diffusion I mean that the water, it's like
6 dropping in a test tube. I have my degree in
7 chemistry also a B.S. It's like dropping a dye in a
8 test tube, it diffuses over all the test tube. The
9 most concentrated area is where the dye is, but it
10 diffuses further out. This is the way salt water will
11 do in the river. Although it's near the mouth of the
12 river for four or five miles, it's not all the way up
13 the river; therefore, when you have a drought, the
14 salt water will diffuse all the way up to the spawning
15 ground area, past the reservation and on upward.

16 Though the concentration of the salt is not as
17 great as it is in the out river, I can tell you one
18 thing, as it goes out to the mouth of the river,
19 because of that diffusion process, we have to inspect
20 one thing in this. When the water stops flowing,
21 there is diffusion going in that way. Recognizing
22 that if you stop the water flowing upward, you get
23 diffusion of something that moves in higher
24 concentration with the flow going downward to the out
25 ward part of the river.

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1 As we look at that, we recognize that, let's
2 look at what comes into the river. One river is made
3 up of tributary of streams, draining from those
4 streams made up from the rain. The farmers during a
5 dry period put their material like pesticides
6 herbicides, nitrates on the ground. They do that with
7 the people living around also, and the families and
8 the yards, you can't tell what they're putting in.
9 But we know those three are there. When the water
10 from the rain flows, the water runs off in streams,
11 takes that with it and as the streams get larger and
12 they coalesce, and finally form what's called the
13 river. That's what's called the upper part of the
14 river towards the mountains. That flows down into the
15 river and the river cleans itself of that. That
16 sweeping motion into the silt of the river and into
17 the marshlands. As it drags, it takes it out, takes
18 it out into the bay, which dilutes it down and into
19 the ocean where it's diluted and it's not harmful.
20 But if you let that build up in the river, we know
21 what happens. Because we've already studied it, we
22 know from other areas that the engineers have put up
23 dams, such as the Colorado River and had to take it
24 down. We know those things happen. I can stand up
25 with any engineer and talk about it if he wishes.

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1 What we know is that when these pesticide build
2 up, they gradually diffuse down the river. As you
3 block the flow of that river going down, as they do,
4 over a period of time this happens, it doesn't happen
5 over one day or immediately. It happens over years;
6 five, ten, twelve, twenty years, depending on how much
7 flow you let go from the river. It eventually builds
8 up and it gradually destroys things until finally it
9 destroys the shad, the other species of the river.
10 There're first the young ones that hatch the eggs and
11 finally the other shad. As it goes down and begin to
12 build up and this builds up into the fish of the
13 river, the people get sick and they begin to have
14 complaints, and they don't understand what it is.
15 This is where we come in.

16 We have studied the ecology of the situation to
17 define where the problem lies. This is what I'm
18 telling you about this river. We have this process
19 going on in the river. As you look at that, they
20 tried to compare the Hudson River and a filter in
21 that. They were smart enough in the Hudson River, the
22 engineers and other marine scientists, to put the
23 filter near the mouth of the river. And that river is
24 ten times larger than the Mattaponi River, you can't
25 compare. Plus it has an opening in the area, the

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1 Great Lakes area and also has an opening in the mouth
2 of it is in the ocean.

3 So this only has one opening and that's in the
4 York River. It's a much smaller river, one tenth the
5 size. If you go back to your encyclopedia and look at
6 the size of those rivers, it will tell you
7 immediately. Therefore, they put it there. That was
8 the first maneuver to try. To see whether it would
9 work. But the guy there said he couldn't compare it
10 to this river because they were putting it so far
11 upstream right in the heart of the wetlands for the
12 shad where most of the shad will be spawning. As the
13 water flows down to that area, which is approximately
14 25 miles upstream, when it flows down to that area,
15 they start suctioning it out. It will leave in a lot
16 of pesticides and herbicides which will settle after
17 that filter and gradually diffuse downward in the
18 river. All the river below that filter will have in
19 ten, twenty years, will be dying.

20 MS. IRONS: You have one more minute,
21 Dr. Custalow.

22 DR. CUSTALOW: I will address one thing, the
23 wetlands. This is the importance of studying that
24 river. The next is the wetlands. Let me say this.
25 This is the greatest impact on wetlands in the history

1 of the State of Virginia at one time. This is the
2 greatest impact. They say that they can mitigate
3 wetlands in another area. They can mitigate and make
4 the land wet, but you cannot make it wetlands. They
5 cannot put back in the microbes that have accumulated
6 over thousands of years. They cannot put back species
7 that have accumulated over many hundreds of years,
8 thousands of years, and that takes time. That's a
9 natural process of doing it. They cannot do that.
10 They don't even know what all those microbes are to
11 put them back. It's part of the ecological cycle that
12 things rely on. The channel of the water has
13 developed in a way in that area from the fact of the
14 natural process. They're going to alter that and you
15 can't say that siphoning the water from the other
16 areas that aren't going to be involved with the
17 wetlands won't be affected from that either.
18 Thank you, very much.

19 MS. IRONS: Thank you. You can send written
20 comments until the end of the comment period which
21 is October 29.

22 Christina Wulf will speak for the Virginia Forest
23 Watch. You have five minutes.

24 MS. WULF: Good evening and thank you, very much
25 for the chance to present comments here. My name is

1 Christina Wulf and I'm with the Virginia
2 Forest Watch. We will also be submitting written
3 comments in more detail. I just wanted to put into
4 the record that we believe that the proposed King
5 William reservoir is inconsistent. We're concerned
6 about the loss of 1500 acres of forestland as well as
7 the most significant loss of forestry wetland.
8 They're not only wetlands that we're losing, they're
9 also forestry wetlands, which is a rare resource in
10 this State.

11 I also wanted to mention just briefly the
12 things that we're particularly concerned about. This
13 project is so out of scale. The more recent studies
14 have found that the water quality needs are about half
15 of what they were initially estimated to be. So we're
16 looking at a project that cannot be the least
17 environmentally damaging. There is just no way,
18 because it's shooting for a water yield that's twice
19 as what we now know is actually needed. Also the
20 project has changed so much over the many, many years
21 in which it's been proposed.

22 The studies done in the past and the permits
23 issued in the past are no longer-- we're not looking
24 at the same project that we're faced with now. That's
25 a serious problem. That's a huge concern.

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1 We need to look at issues like the question of
2 water withdrawal from the Mattaponi and the salinity
3 of the river. You talk about flip-flopping, come on
4 folks. We keep hearing these different periods of
5 time in which water withdrawal will be allowed. Who
6 will be allowed to determine when water emergency
7 exists? We, as citizens, have been asked to trust
8 that these agencies are going to do the best thing for
9 the natural environment of Virginia. We're also, many
10 of us are concerned about that tonight.

11 I also wanted to mention the concern about
12 the intake structure and the impact on the spawning
13 ground that were so well-laid out by the previous
14 speakers. To read a quote from a letter from the
15 Alliance to Save the Mattaponi; it says: Impacting
16 the spawning ground endangers the fisheries, water
17 quality, vegetation, Mattaponi wetlands, Cohoke
18 wetlands, Mattaponi hatchery environment, adjacent and
19 nearby property owners, and use of the resource will
20 be greater than can be defended. I strongly agree
21 with that and the Virginia Forest Watch does as well.

22 The last thing I wanted to say is on a more
23 personal note. I see this project as being very
24 representative of the old way of thinking and outdated
25 way of thinking that doesn't take into account the

1 interest of the people of Virginia, the rural citizens
2 of King William County, the people who deeply care
3 about the natural environment of Virginia, and, of
4 course, the Native American tribes that will be
5 impacted. I can understand why these outdated
6 projects keep going forward; that mindset that is
7 behind them may not have been educated to the extent
8 of environmental injustice and social injustice that
9 has gone on in this country.

10 After twelve years of public schooling and four
11 years at the University of Virginia, I was shocked
12 when I stood on the shores of the reservoir in
13 Northern Pennsylvania and discovered that the
14 reservation was underneath that reservoir. Those
15 people had been flooded out of this land that was
16 stolen from them. This is an emotional issue for me
17 and I think for many of us. To know that same sort of
18 treatment is happening on water project after water
19 project around this country; North Dakota, North
20 Carolina, and so many places and reservoirs are built
21 on top of the homes and lives of native people and
22 poor people and rural people. It's really time for
23 that kind of treatment to stop. There are other
24 options.

25 Finally I would like to say to the students here

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1 and the younger people, I encourage you to stick
2 around after the folks who find this project
3 inconsistent are done speaking and hear the people who
4 think it is consistent to get an idea where they're
5 coming from so we can do it better. Thank you, very
6 much.

7 MS. IRONS: Next person is Ann Jennings
8 representing the Chesapeake Bay Foundation.

9 MS. JENNINGS: Good evening. I am Ann Jennings,
10 Virginia Assistant Director for the Chesapeake Bay
11 Foundation. On behalf of the Bay Foundation, I wish
12 to express our sincere appreciation for this
13 opportunity to comment on the King William Reservoir
14 Water Project as the Virginia Department of
15 Environmental Quality moves toward a determination on
16 the project's consistency with the Virginia Coastal
17 Resources Program. We believe your decision to grant
18 a hearing is warranted given the substantial public
19 interest in this project as well as its substantial
20 impact to Virginia's natural resources. I will make a
21 few brief comments this evening and we will be
22 providing written comments for the record.

23 The Chesapeake Bay Foundation is the largest
24 regional, private organization working to restore the
25 Chesapeake Bay. With our more than 110,000 members,

1 40,000 of whom reside in Virginia, CBF advocates for
2 laws and funding necessary to save the Bay. While our
3 focus is typically not directed at specific
4 development activity, since the mid to latter '90s,
5 the Bay Foundation has actively opposed the King
6 William reservoir project. Throughout the lengthy
7 review of the project, our assessment has found that
8 the destruction of the Commonwealth's natural
9 resources will be profound should the project be built
10 and there remains lesser damaging alternatives. That
11 opinion remains the same today.

12 The Department is seeking public input as to
13 whether the King William Reservoir Project is
14 consistent with the Coastal Management Program. But
15 the public notice fails to provide sufficient
16 information to thoroughly assess the impact.
17 Furthermore, the City's updated consistency
18 certification fails to acknowledge the revised
19 Mattaponi River pumping scenario, and thus is silent
20 on the potential impact to instream flow, tidal
21 freshwater wetlands, and the overall project benefit.
22 As a consequence, CBF finds there is insufficient
23 information and analysis on which to render a
24 decision.

25 You've heard it already, but I will say it

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1 again: The King William reservoir will result in the
2 single largest permitted loss of wetlands in
3 Virginia since enactment of the Clean Water Act in
4 1972. I have said that once and have probably said it
5 hundreds of time, but it remains the case.

6 At the request of the Bay Foundation, a team of
7 scientists from several Virginia universities and the
8 Smithsonian Environmental Research Center reviewed the
9 City of Newport News' wetland mitigation plan. These
10 scientists found that the City's plan would result in
11 the loss of wetland benefits, in particular,
12 the natural filtering capabilities of nontidal
13 wetlands to remove excess nutrients from runoff prior
14 to reaching the bay. The Norfolk District Corps of
15 Engineers, in making its recommendation to deny
16 construction of the reservoir supported and further
17 substantiated conclusion of these experts.

18 Yet since notice of the federal recommended
19 Record of Decision in 2001, the public has not been
20 afforded an opportunity to review and comment on the
21 wetland mitigation plan. The Department recognizes
22 the public's role in review of the wetland mitigation
23 plan as your letter of September 20, 2004 to the City
24 specified that the current, I quote, wetland
25 mitigation plan be made available so that the public

1 has access and, again, I quote, to the relevant and
2 most current information. However, the current
3 wetland's mitigation plan has not been public
4 noticed. Without the opportunity to review this
5 essential component of the proposed project, CBF
6 cannot determine if issues raised in 2001 have been
7 adequately addressed. CBF, therefore, recommends that
8 the Department extend the public comment period and
9 provide access to the current wetland mitigation
10 plan.

11 Secondly, as a consequence of conditions imposed
12 by Virginia Marine Resources Commission, the City is
13 prohibited from withdrawing water from the Mattaponi
14 River during a significant portion of the year
15 including months during which the river flows are
16 normally high. The City acknowledged during the VMRC
17 hearing in August that this restriction will result in
18 its need to build another water supply sooner as well
19 as pump more water up to the City's minimum instream
20 flow limits. Unfortunately, the Commission did not
21 reevaluate the reduction of fresh water flows
22 resulting from this revised pumping scenario on tidal
23 freshwater wetlands along the Mattaponi River.
24 Therefore, it is not clear whether the 1991 study by
25 the Virginia Institute of Marine Science, which is

1 based on the City's withdrawal plan, sufficiently
2 addresses this concern. Again, the Chesapeake Bay
3 Foundation urges the Department to address this matter
4 with opportunity for public input prior to rendering a
5 decision on the consistency determination.

6 On behalf of the Foundation, again, I thank you
7 for this opportunity to comment and I urge the
8 Department to consider our concern prior to making its
9 decision. Thank you, very much.

10 MS. IRONS: Thank you.

11 MR. MURPHY: I have been informed that we can
12 keep the building until 10:30; that means the DEQ
13 staff has to put the chairs away. Volunteers
14 accepted.

15 MR. ROSENBERG: Good evening. My name is Matt
16 Rosenberg and I'm a third year law student intern with
17 the Institute for Public Representation, a legal
18 clinic at Georgetown University Law Center. This is
19 Eric Albert, staff attorney at IPR. The comments that
20 I am providing today highlight the likely content of
21 the written comments that will be submitted.

22 Since 1997, IPR along with counsel David Bailey,
23 has represented the Mattaponi Indian Tribe in its
24 opposition to the King William Reservoir Project.
25 Mr. Bailey has authorized me to present the comments

1 of the Tribe's counsel.

2 Today we urge you not to certify the City's
3 compliance with the Coastal Zone Management Act at
4 this time, because the City has not complied with the
5 wetlands management or Coastal Lands Management
6 enforceable policies of Virginia's Coastal Resources
7 Management Program.

8 First, DEQ cannot find the City's project
9 consistent with the CZMA requirements because the City
10 is not in compliance with the enforceable policy on
11 wetlands management implemented by the Virginia Water
12 Protection Permit Program. As you know, the City's
13 Water Protection Permit includes several conditions
14 requiring the City to submit important monitoring
15 plans, including, among others, a salinity monitoring
16 plan and a detailed final wetland mitigation plan.
17 These plans go to the very heart of the wetlands
18 mitigation policy -- the protection and preservation
19 of the wetlands.

20 The deadline for the City to submit these plans
21 was almost five years ago in December 1999, and the
22 City has never submitted those plans. By missing the
23 deadline, the City has not complied with the permit
24 conditions, violating the permit itself, and in turn,
25 wetlands management policy.

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1 Moreover, the City has never received a valid
2 extension of the deadline. In order to grant an
3 extension, the State Water Control Board would have
4 needed to hold public hearings to modify the permit
5 conditions, which it has never done. Even under the
6 most generous calculation, and taking into account the
7 City's invalid request for an extension, the deadline
8 could only have been extended to September 17 of this
9 year.

10 The City's failure to comply with the VWP permit
11 conditions has had real-world consequences. For
12 example, because the City does not complete the
13 multidimensional hydrodynamic salinity modeling
14 required by the VWP Permit, the Virginia Marine
15 Resources Commission was forced to rely on inferior,
16 one dimensional salinity modeling for its permit
17 decision. Therefore, the VMRC could not make an
18 informed permit decision and could not adequately
19 protect the Fisheries Management policy of the VCP, an
20 integral component of the CZMA.

21 Second, the DEQ cannot find the City's project
22 consistent with CZMA requirements at this time because
23 the City is not in compliance with the coastal lands
24 management enforceable policy. As you know, local
25 governments, here, King William County, administer

1 this enforceable policy with advice from the
2 Chesapeake Bay Local Assistance Division when
3 necessary. Under the Virginia Code, the
4 county determines what land within its boundary
5 constitutes a Chesapeake Bay Preservation Area. Any
6 development within that area then requires zoning
7 approval from the County Board.

8 The City has failed to prove that it has zoning
9 approval from King William County. The City has not
10 completed the environmental site assessment necessary
11 to determine the exact boundaries of any Resource
12 Protection Area affected by the project, nor has it
13 submitted a project plan describing the project
14 components, both requirements of the zoning
15 ordinance. These submissions, and others required by
16 the County zoning ordinance, are necessary for the
17 County to determine whether the project is water
18 dependent and whether all non water dependent
19 components are located outside of the Resource
20 Protection Area. The City has neither submitted the
21 information to nor received zoning approval from the
22 County. Instead the City has asserted that it has
23 satisfied the Chesapeake Bay Preservation Act's
24 requirements.

25 However, the Virginia Code directs that the

1 County and not the City determines whether the project
2 complies with its Chesapeake Bay Preservation Area
3 zoning ordinance. Only if the County grants zoning
4 approval based on the required submissions from the
5 City, can the DEQ determine whether the City has
6 satisfied the Coastal Lands Management policy of the
7 VCP. We believe that the DEQ cannot grant CZMA
8 consistency certification at this time because the
9 City has not met its burden to obtain Chesapeake Bay
10 Preservation Area zoning approval from King William
11 County.

12 In sum, until the City satisfies the conditions
13 required by the VWP Permit and receives Chesapeake Bay
14 Preservation Area zoning approval from King William
15 County, the DEQ cannot find the City's project
16 consistent with the Coastal Zone Management Act.

17 Thank you very much for your time. This
18 concludes my remarks and we would be happy to answer
19 any questions you may have.

20 MS. IRONS: Thank you. Michael Town,
21 representing Sierra Club.

22 MR. TOWN: How much time do I have?

23 MS. IRONS: You have five minutes for the
24 organization and six people donated time, so you have
25 ten minutes.

1 MR. TOWN: I'll keep it to five.

2 Good evening, my name is Michael Town and I represent
3 the Sierra Club Virginia Chapter. Please accept these
4 comments on behalf of the Sierra Club and our 18,000
5 Virginia members.

6 I want to start by thanking the Department of
7 Environment Quality, Mr. Murphy, Ms. Irons, and
8 Director Burnley, for holding this hearing. I
9 understand that this is an unprecedented decision, and
10 that the applicant opposed this opportunity for public
11 involvement; however, with such a controversial
12 project as the King William Reservoir and the current
13 condition of our threatened coastal resources, your
14 prudent decision to listen to all concerns best serves
15 the public interest, so thank you.

16 We will be submitting written comments as well,
17 and I will focus my oral comments to three specific
18 points regarding the consistency with the Virginia
19 Coastal Resources Management Program.

20 If built, the King William reservoir will lead to
21 the single largest permitted destruction of wetlands
22 in the Commonwealth since the passage of the Clean
23 Water Act. No matter how well the mitigation plan is
24 designed, these sensitive important wetlands cannot be
25 replaced. Our Commonwealth, our last two Governors

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1 have made it a priority to protect wetlands. This
2 project does not satisfy that policy, nor is it
3 consistent with the public's desire to protect the
4 Chesapeake Bay and its tributaries. This fact alone
5 should cast serious scrutiny on the merits of the
6 project.

7 However, if the Department chooses to overlook
8 this fact and proceed with this certification, then we
9 are concerned that this determination will be made
10 prior to the finalization of the Wetlands Mitigation
11 Plan for this project. We understand that the
12 mitigation plan will be open for public comment soon,
13 and no decision as to consistency should be made until
14 that record is closed and the final plan is adopted.
15 Furthermore, the Department should extend the comment
16 period on consistency in order to receive more
17 substantial comments from the public on that plan. It
18 is impossible to determine whether the reservoir
19 project is consistent with our Coastal Program if
20 there is no final wetlands mitigation plan in place.
21 In fact, until approved, there is no wetlands
22 mitigation plan.

23 Second, although by enforceable policy, both the
24 VMRC's permit for an intake structure and the State
25 Water Control Board's Virginia Water Protection Permit

1 are consistent with our Coastal Program, there are
2 serious doubts that the two permits are consistent
3 with each other. The issue is related to the length
4 of time between the issuance of these permits, and the
5 changes to the project during this lapse of time. The
6 State Water Control Board acted prematurely in
7 approving this permit in 1997, inconsistent with its
8 historic practice of coordinating the Board's decision
9 with the activities of other state and federal agency
10 decisions.

11 There are also problems with the permit for the
12 intake structure. The Commonwealth's own scientists
13 at the Virginia Institute of Marine Science cast doubt
14 as to whether it is possible to meet the conditions of
15 the VMRC permit. The issue at hand is the impact of
16 the pumping hiatus on both the minimum in-stream flow
17 requirements of the VWP permit and the frequency this
18 hiatus will need to be lifted during drought emergency
19 in order to maintain the reservoir's safe yield. The
20 applicant's paid scientists even agreed that the
21 data does not exist to determine these impacts. They
22 would like for the project to proceed based on assumed
23 estimates, on assurances rather than facts and data.
24 This is not acceptable.

25 The pumping hiatus will be during some of the

1 wettest months of the year, the months the project
2 will rely on to achieve its safe yield. If the
3 reservoir can not be filled during these months, it
4 will need to be filled during months of historically
5 lower flows. These are the months where it is
6 even more important to maintain strict in-stream flow
7 levels to protect the river and its habitat - both for
8 the environmental and public health reasons.

9 The data has not been collected to ensure that
10 this is an even feasible condition. No consistency
11 determination can be made until the data is available
12 to determine that the permit requirements of the VMRC
13 permit are achievable, and that the pumping regimen is
14 possible within the constraints of the VWP permit. At
15 this time, according to the applicant, their paid
16 scientists, the Commonwealth's scientists, and the
17 opponent's consultants, these data do not exist.

18 This leads to a third critical point. In 2007,
19 the VWP permit will be up for renewal. This permit
20 will expire in just over 26 months. Already, the
21 applicant has sued the Commonwealth in protest of the
22 conditions of that permit. They have publicly stated
23 that they will work to change those conditions. This
24 department is being asked to reach its final
25 consistency certification knowing full well that a

1 major component of this determination is about to
2 change.

3 We request two actions: First, that this
4 certification be delayed until a final VWP permit has
5 been approved so that the consistency certification
6 can be made based on the project that is permitted to
7 be built, not the one that is proposed today.

8 Second, we request that the Department re-open
9 the VWP permit immediately, so that the process for
10 renewal can be coordinated with other state and
11 federal agency's decisions regarding this project, and
12 that the public be given every opportunity to help
13 shape the permit in order to ensure that the public's
14 interests are protected.

15 Until final plans and permits are in place, and
16 until the facts and data exist to determine impacts on
17 our coastal resources, the Department cannot and
18 should not certify this project consistent with the
19 Virginia Coastal Resources Management Program.

20 Thank you for the opportunity to speak.

21 MS. IRONS: Thank you. Next is Billy Mills.

22 MR. MILLS: My name is Billy Mills and I'm here
23 on behalf of the Mattaponi and Pamunkey River
24 Association. I think our feelings have been known
25 throughout this process for almost a decade and that

1 we are certainly requesting that DEQ not grant
2 certification for this project. I had a number of
3 comments to offer and many of them have been addressed
4 so I won't repeat those. I do have a couple of things
5 that folks didn't speak to before having to do with
6 our review of both the original 1999 certification
7 documents offered by the City and the 2004 update.

8 When we reviewed these documents, which were
9 fairly straight forward and simple, they weren't
10 complicated and they weren't helpful. There was
11 really nothing informative that we hadn't seen before
12 but it made us pause to see some of the language in
13 both the update and the 1999 submission. We thought
14 the update would be more substantive than the 1999
15 original. We saw words like, will comply, or in
16 concert with, or is addressed, or such areas have been
17 avoided. We took issue with, is in concert with, or
18 no adverse effect is anticipated. It is our judgment
19 that these often repeated nonspecific claims without
20 any substantiation are of little or no merit to VCRMP
21 managers and reviewers for the purpose of determining
22 consistency.

23 In the 2004 update under Section 2, the
24 assessment of Probable Effects, items A and C,
25 reference that both the Fisheries Management issues

1 and all necessary submerged land permits have been
2 further addressed through conditions appended to the
3 permit by the VMRC August 12, 2004. While many of the
4 permit conditions are quite specific like we've seen
5 from the VWP permit from DEQ in 1997, as of this date,
6 I think DEQ should be advised that the City and VMRC
7 have not yet concluded or even started to set a date
8 to work on the final permit condition, which came at
9 the very end of VMRC's hearings.

10 That's where the City agreed to work with VMRC to
11 develop a Mattaponi watershed endowment that among
12 other things would provide a funding mechanism for the
13 development and sustainability of an independent
14 oversight authority, which is of great concern to
15 those of us in King and Queen, King William County.

16 As of today that hasn't been done. That permit
17 condition has not been specified, so in light of this
18 and the comments of others, we, too, would ask that
19 you respectfully extend your October 29 closing date
20 for comments.

21 In Section 2, item C, of the 2004 update, the
22 City offered some response to DEQ's addition of
23 Coastal Lands Management enforceable policies of
24 VCRMP that, quote, the project will comply with
25 this policy. That was the statement that we found.

1 It alluded to describing the water dependent nature of
2 the project as authorized pursuant to 9 VAC
3 10-20-130.

4 We would note per our review of VCRMP's Coastal
5 Management coordination goals that Goal 10 reads as
6 Virginia defines its coordination, quote, to promote
7 informed decision making by maximizing the
8 availability of up-to-date educational information,
9 technical advice, and scientific data. MPRA submits
10 that VMRC erred in its August 12th 2004 permit
11 approval decision, specifically and
12 uncharacteristically by it's decision-making action
13 that failed to meet the stated Goal 10 objective. We
14 think that's important. We think it failed.

15 With respect to the enforceable policy relative
16 to the Coastal Land Management Program, the program
17 administration is described in that act, as I read it,
18 is that Virginia DCR's Division of Chesapeake Bay
19 Local Assistance, by statute dictates that compliance
20 enforcements be undertaken by local jurisdictions.
21 That's a problem for us in looking at the real world
22 management of the project over eight to ten years of
23 build up, it strikes us that King William County is
24 not equipped to tow the line on this.

25 It seems impractical at best and unworkable at

1 worst that the Commonwealth's compliance enforcement
2 procedure initiation for the City's construction
3 effort, and the multiple associated impacts, will fall
4 to King William County. It's an understaffed, rural
5 tidewater local government, with whom the County, as
6 the project host jurisdiction, is financially
7 obligated to the City under a long-standing
8 partnership agreement. For example, that's why you
9 haven't heard from a lot of King William officials
10 throughout the last ten years. They've been bound by
11 the working agreement with the City.

12 Current statutory penalties and/or consequences
13 for compliance violations by the City, if actually
14 pursued for remedy by King William County, under this
15 management scheme are of little more than a nuisance
16 level. For example, it will never translate to
17 anything as substantive as a stop-work order
18 regardless of violation. To invoke serious compliance
19 action, King William County will be compelled to work
20 through CBLAD's process, a procedure that we know as
21 one that has slow reaction and reluctant resolution.
22 In fact, not once in the 15 years of the Chesapeake
23 Bay's Preservation Act shelf life has the Division
24 taken action all the way to its statutory legal remedy
25 of suit.

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1 We conclude that this is something not good
2 enough and clearly not consistent with the VCRMP's
3 goals and objectives. Virginia's Coastal Resource
4 Management Program is not about intention, but it's
5 about effective program with measurable results to
6 protect coastal resources. In looking at the
7 framework of what the City put before you, we
8 concluded that an agency by agency check off like this
9 where you go blow by blow here's how we're going to
10 handle what we're really doing, it doesn't get at the
11 level of detail you need to make consistency
12 determination, especially as some of the other
13 speakers have alluded to. There is significant
14 disparity between the terms and conditions of the 1997
15 VWP Permit and the 2004 VMRC's permit. No one has
16 looked at that. It's before you as satisfying a
17 couple of different condition requirements that no one
18 has resolved.

19 My final comments are with respect to the
20 advisory policies, and I would ask that Virginia DEQ
21 carefully consider the extent by which the City's VWPP
22 and VMCR permit issued to date fail to support
23 Virginia's obligations and trust responsibilities
24 under the Chesapeake 2000 Agreement with respect to
25 local Chesapeake Bay resources, be they wetlands,

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1 aquatic nurseries, feeding grounds, and significant
2 wildlife habitat areas. I won't make a case about the
3 wetlands again, because I think Ann did that and so
4 did Mike.

5 We do have a final concern about Section 3 of the
6 Advisory Policies. They cite how vital Virginia's
7 waterfront development is to our citizens,
8 specifically commercial community ports, commercial
9 fishing piers, and community waterfronts. It further
10 recognizes two classes of priority uses, specifically,
11 and I quote, water access-dependent activities and
12 activities specifically enhanced by waterfront
13 locations and other activities. Section 3 goes on to
14 identify waterfront historic properties as the subject
15 of priority protection and enhancement strategies.

16 We submit that both King and Queen and King
17 William Counties boast numerous significant waterfront
18 access, waterfront development and historic properties
19 sites within the reservoir project's 10 mile no
20 discharge zone. The ability of both counties to fully
21 exploit the much needed commercial potential of these
22 valued resources will be dramatically diminished by
23 the City's reservoir project. Again, MPRA submits
24 that these unanticipated adverse impacts to our rural
25 communities have not been factored or evaluated, and

1 we call upon Virginia DEQ to assist us in protecting
2 our unique heritage resources.

3 MS. IRONS: You have one more minute.

4 MR. MILLS: Finally, I have a comment with
5 respect to Virginia resource protection partner in the
6 federal government. I'm reminded it was Colonel Carol
7 and not the Colonels we heard before who are retired,
8 that delivered a comprehensive protracted review and
9 analysis of this project long ago issued from their
10 recommendations to deny a 404 permit to the City,
11 citing multiple direct, indirect, cumulative, and
12 secondary effects and impacts attributable to the
13 City's proposed project. These four effects - direct,
14 indirect, cumulative, and secondary, are precisely the
15 criteria that the federal government uses to determine
16 whether coastal effects are reasonably foreseeable,
17 and the Virginia DEQ would be remiss to not note the
18 careful construct of the District Engineer's
19 comprehensive critique.

20 Thank you very much for the opportunity to be
21 here.

22 MS. IRONS: Thank you. Next is Kelly Place.
23 Donation from 15 individuals. We ask that you make
24 this concise as possible.

25 MR. PLACE: Good evening. My name is Kelly

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1 Place. I'm a waterman and today I'm representing the
2 eleven Watermen's Associations listed here with their
3 contact number. I represent Virginia on several
4 history management committees, both advisory and
5 management most frequently serving as Senator
6 Chichester's proxy for the advocational and fishery
7 commission. Senator Chichester is on record as being
8 opposed to this project. We watermen and women urge
9 you to reject this project's certification since it:
10 1. Is inconsistent with the Coastal Zone Management
11 Act, the Virginia Coastal Program, its enforceable
12 policies, and advisory policies. We have assessed the
13 Alliance's, submitted comments regarding the
14 consistency and enforceable policy and we completely
15 concur.

16 I will skip down to 4: That it violates many
17 state, regional and federal fishery management laws
18 and policies. These are the main focus of our
19 comments.

20 Because of this vast body of law, policy and data
21 relevant to this consistency certification, we request
22 an additional 90 days of public comment period as the
23 minimum time necessary to properly assess consistency
24 with the VCP and other applicable laws and policies.

25 This project is contrary to the move towards

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1 ecosystem management that it represents ecosystem
2 manipulation of the worst and most fundamental kind.
3 Massive water diversionary structures have a long
4 history of unpredictable impacts. The cumulative
5 impacts and their negatively synergistic results are
6 often catastrophic and unforeseen.

7 Recognizing this, Congress passed the Anadromous
8 Fish Conservation Act in 1965, the CZMA and Clean
9 Water Act in 1972 and the Magnuson Act four years
10 later. Following this were laws such as the
11 Interjurisdictional Fisheries Act, Atlantic Coastal
12 Fisheries Co-operative Management Act, and the
13 Sustainable Fisheries Act. All of these and many
14 other laws speak to the necessity of protecting fish
15 habitat, especially diadromous fish habitat.

16 Virginia's Coastal fisheries are subject to laws
17 promulgated by the ASMFC under the authority from
18 Congress. Every fishery management plan now has
19 habitat section. The necessity to protect habitat has
20 been further reflected by the mandatory designation of
21 essential fish habitat. Now that has been further
22 refined to designate HAPC habitat areas of particular
23 concern. It is precisely in the Mattaponi HAPC that
24 the project's massive intake should not be located.
25 To that point, the Virginia Institute of Marine

1 Science's comments that it is in the worst river in
2 the worst place is literally accurate. You could not
3 go into the Chesapeake Bay and find a worst place to
4 do this.

5 The aforementioned laws have direct bearing on
6 enforceable policies 1, 2, 3, 5, 6, and 9 of the VCP.
7 You should be advised that these areas of enforceable
8 policy will run afoul of much federal scrutiny if
9 approved for consistency. The project flouts all VCP
10 advisory policies for Geographic Areas of Particular
11 Concern as well.

12 If you think existing federal law regarding this
13 policy can be circumvented, as do the applicants, then
14 consider this: If the recently released U.S.
15 Commission on Ocean Policy report's recommendation to
16 Congress are even partly adopted, there will be broad
17 new areas whereby what is currently consistent with
18 the VCP's enforceable policy today will be violations
19 in the near future. This is certain to happen.

20 Consider the guiding principles, tribal issues,
21 national sediment strategies, coastal management,
22 watershed management, water quality and ecosystem
23 health sections among others. Note the strengthened
24 federal agency structure and over 200 recommendations.
25 Then note the comment on the CZMA, CWA and other

1 federal laws. Please pay attention to the proposed
2 financial incentives and especially the disincentives.
3 For instance, the statement that Congress should amend
4 the Clean Water Act to authorize federal financial
5 disincentives against activities that degrade water
6 quality and provide the federal authority to act if a
7 state chronically fails to make progress in
8 controlling nonpoint sources. This project will do
9 just that and the State of Virginia will end up paying
10 due to the financial disincentives that are in the
11 U.S. Ocean Commission Policy report. It's also
12 predictable that Virginia won't meet its voluntary
13 water quality standards by 2010 as required and will
14 therefore provoke federal government to imposed
15 mandatory standards as threatened. This project is
16 the worst of several that will contribute to
17 Virginia's failure to comply.

18 Therefore, we urge you to seek guidance from the
19 CZMA section 6217b 1B, which mandates that the
20 identification of and a continuing process for
21 identifying land uses which individually or
22 cumulatively may cause or contribute significantly to
23 the degradation of those coastal waters that are
24 threatened by reasonably foreseeable increases in
25 pollution from new or expanded sources, ends quote.

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1 You would have to be blind not to foresee the
2 predictable impacts from this project and the
3 subsequent future cost to the Commonwealth.

4 I'll skip some of my testimony to make more time
5 for others.

6 We reject the violation of the public trust
7 doctrine embodied in Article 11, Section 1 of
8 Virginia's constitution. This is in regard to the
9 VMRC permit. We condemn the situation whereby VMRC
10 was subjected to enormous legislative pressure to
11 grant it. In 2003 unsuccessful HB2154 attempted to
12 merge VMRC with another agency thereby getting it out
13 of the way. This year other legislative measures were
14 put in to weaken, eviscerate, and circumvent VMRC's
15 authority. We think that's impermissible and does
16 speak to the enforceable policy.

17 We reject the permit as a violation of Section
18 28.2-1205 of the Code of Virginia. Failure to protect
19 pre-existing uses of the Mattaponi River and its
20 ecology are wrong. Failure to abide by DGIF's and EPA
21 designed recommendation number 1 for water intake
22 structures is wrong.

23 I have a long list of wrongs here. I'll skip
24 most of them, but I would like to say that the fact
25 that the RRWSG's hired fishery panel wasn't given

1 authority to address the location of the proposed
2 intake is wrong. Also use of a locally outdated
3 salinity model by the hired fishery panel is wrong.

4 The litany of wrongs listed here is too numerous
5 to speak to, but I'll mention another most grievous
6 wrong done to the watermen. 28.2-102 of the Code of
7 Virginia specifies that among the other interests to
8 be represented on the Commission, there shall be one
9 working waterman on the Commission to represent their
10 interests. It is the only official representative
11 for us on any fishery policy making body in the
12 State. Since the VMRC's May 14, 2003 denial of the
13 permit, a different person was appointed to the
14 waterman's seat. That person lacked support from
15 nearly all watermen. His vote was critical to the
16 narrow decision VMRC reached on the intake permit and
17 we have reason to believe that the hidden
18 machinations, misrepresentations and influence of the
19 reservoir's proponents are responsible for his
20 appointment to our seat, and we reject his vote as
21 invalid, predetermined and unrepresentative of the
22 watermen's views.

23 We have deliberated amongst ourselves on what
24 appropriate actions to take. Nevertheless, we want to
25 apologize to the public and assure them that his vote

1 is not reflective of the vast majority of the
2 watermen's views. We feel it was an embarrassment and
3 a disgrace. We want it to be clear that the
4 watermen's support clean water, productive marine
5 ecosystems and the Mattaponi Indian's Treaty rights of
6 1677. We believe the project is inconsistent with all
7 of those. Additionally, the Mattaponi's preexisting
8 uses on the river go back millennia and should be
9 paramount over all others. We view the project as an
10 egregious, illegal and immoral assault on the cultural
11 integrity of our Mattaponi brothers.

12 There are a number of changes to the project and
13 other incongruities in the permitting process that
14 also speaks to inconsistency with the VCP enforcement
15 policy. They are listed in the Alliance's statement
16 and I will speak briefly to a couple of them.

17 The primary justification for the reservoir, the
18 future water needs are about half of what the project
19 is designed for. Yet the project's size remains the
20 same while awareness of environmental impacts have
21 increased. The already massive intake structure was
22 increased in size, but the public was not notified and
23 was unable to provide written comments that also speak
24 directly to the enforceable policies. A situation
25 whereby a water emergency and pumping hiatus may be

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1 declared are so lax that the applicant can cause this
2 to happen, declare suspension themselves, and has
3 every incentive to do so.

4 The proposed special permit revealed after the
5 written public comment period was over including the
6 installation of a chemical piping structure in case of
7 fouling organisms, especially zebra mussels.
8 Application of unspecified chemical poisons in
9 unspecified amounts and unspecified manner and an
10 unspecified time are now explicit in the proposed
11 special permit conditions. The chemical piping
12 structure which we've been unable to find in any
13 diagrams or drawings was not part of the Versar
14 report, VIMS report, or any other document for written
15 comments for the VMRC hearing. Since the public had
16 no opportunity to give written comment on this ominous
17 issue, it should have profound legal ramifications
18 that speak to consistency denial.

19 It's not whether, but when our water will have
20 zebra mussel infestations. They're in the Bay
21 watershed already. The chemical piping structure and
22 its unspecified toxin will likely need to be used for
23 the intake to be functional. Consequently any
24 judgment of the intake's actual operational impact on
25 the river must include a full assessment of

1 operational regime of the chemical agent and its
2 impact upon the marine resources and human health.
3 It's conspicuous in its absence.

4 Lastly, the agreed upon pumping regime speaks
5 loudly to the applicant's intent not to abide by the
6 current restrictions because they would render the
7 project's objectives unattainable. They have agreed
8 to a pumping hiatus of up to 150 days, which
9 encompasses nearly all of the high flow months. Yet
10 these are the very months during which the project's
11 design intended to pump water. To pump water during
12 these low flow months would exacerbate the ecological
13 disruptions from the project. The low flow periods
14 would become low flow all the time.

15 The VIMS report and several others questioned
16 whether the reservoir objective could be met with a
17 hiatus of 150 days. The applicant assured the VMRC it
18 could, even though the most restrictive modeling
19 conducted was based on only a 60 day hiatus. Even
20 that is of questionable veracity.

21 MS. IRONS: One more minute.

22 MR. PLACE: A hiatus of even 90 days, which is
23 quite likely, will render the project inoperable.
24 Combine that with the incongruity of the fact that the
25 applicant filed suit against DEQ claiming the existing

1 MIF's were too restrictive. The interbasin transfer
2 limits to other Newport News Water Works reservoirs
3 were too constrained, and the releases required into
4 Cohoke Creek were too great to provide enough water
5 for the reservoir's construction.

6 It's clear that the applicant will say whatever
7 they need to do to get these permits. Those last two
8 examples I gave to you speak of the intent. Their
9 words are on the record. They've already expressed
10 their intent to get around the various permits.
11 Consequently we feel it's very obvious to you which
12 policies these are contrary to. Today we're
13 considering a consistency certification. Perhaps we
14 should be considering an investigation. Thank you.

15 MS. IRONS: I have three speakers here with
16 numbers 1, 2, 3 and I'm not sure if they want to speak
17 in that order.

18 MR. TAYLOR: Thank you for the opportunity to be
19 here tonight and offer these comments. I am
20 representing Wetlands Watch, a nonprofit organization
21 dedicated to the preservation and conservation of
22 wetlands in Virginia. My comments will focus on
23 Virginia wetlands' policy. Regarding the wetlands, we
24 find the project to be inconsistent with the Coastal
25 Zone Management Program.

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1 One of the stated purposes of the VCP is quote,
2 to preserve tidal wetlands, prevent the defoliation
3 and accommodate economic development in a manner
4 consistent with wetlands preservation.

5 That last phrase is often forgotten as people try
6 to balance economic development with wetlands
7 conservation. Any economic development that is going
8 to be considered must be considered only in a manner
9 consistent with wetland preservation when wetlands
10 would be impacted.

11 We believe that the debatable economic need for
12 the reservoir does not justify a very certain loss of
13 more than 400 acres of non tidal wetlands. State law
14 and regulations require certain steps be taken and
15 evaluate the project on the impact of the wetlands.
16 It must be shown that all reasonable steps have been
17 taken to avoid impact, in fact, must be minimized and
18 finally impact must be mitigated. An applicant must
19 show that every reasonable step has been taken to
20 avoid wetlands impact in consideration of avoidance.
21 The applicant will say that the impact here is
22 unavoidable, but avoidance has to be considered with
23 need.

24 The persistent disagreement among experts about
25 whether the peninsula needs all the water that this

1 reservoir would provide calls into question whether or
2 not this large wetlands impact of over 400 acres of
3 non tidal wetlands is justifiable. The Virginia
4 Institute of Marine Science and VMRC staff have
5 carefully described how significant the impact will
6 be, more convincing than has the need for the project
7 been shown. The experts have testified that the plan
8 size of the reservoir is greater than demonstrated
9 need would require. This raises a reasonable question
10 about whether the most important step in planning a
11 wetland disturbance project, avoidance, has been fully
12 accomplished. Thus the project plan is inconsistent
13 with the VCP.

14 Second. An unavoidable impact must be mitigated.
15 Since the mitigation plan is not finalized yet or made
16 public, it is premature to reach certification. Until
17 we can see a wetlands mitigation plan, we cannot tell
18 whether the wetlands impact is consistent with the
19 state and federal law and no net loss policy. Since
20 the mitigation plan has not been available to review,
21 we request that the public comment period be extended
22 to allow the opportunity for public review and
23 comments on the mitigation proposal.

24 To issue a consistency certification without
25 public review of a mitigation plan would be itself

1 inconsistent with state and federal laws under which
2 DEQ operates. DEQ wrote in its permit for this
3 project in 1997. Since then State policy on
4 nontidal wetlands has been updated reflecting growing
5 public awareness for the importance of wetlands
6 performance on the ecosystem of which people, in fact,
7 are a part. New Virginia non tidal laws require a no
8 net loss of wetlands acreage and function.

9 We do not have any convincing evidence that the
10 yet to be announced mitigation plan will replace the
11 wetlands function that will be lost to this project
12 even though acreage might be addressed. Furthermore,
13 the current iteration of the project's plan is
14 different from the one DEQ permitted seven long years
15 ago. Thus DEQ permit fails to address certain new or
16 changed features of the project. Thus the plan cannot
17 be found to be consistent with state policy law that
18 rests with the VCP.

19 Finally I will finish up with this observation.

20 The applicant here seems to be paying lip service to
21 Virginia Coastal Management Program. Its seven page
22 certification in 1999 and its three and a half page
23 updated analysis do not do justice to their duty to
24 show how their plan is consistent with VCP. Regarding
25 wetlands, they merely say they will be in compliance

1 without explaining how. Simply put, they don't
2 provide enough information to establish a reasonable
3 basis for a consistency determination to be made.
4 Thank you, very much.

5 MS. IRONS: Eugene Rivara, representing the
6 Alliance to Save the Mattaponi. Other people from
7 that organization have donated time.

8 MR. RIVARA: Thank you for the opportunity to
9 speak. My name is Eugene Rivara. I live at 1270
10 Commerce Road, Aylett, Virginia, which is a county
11 near the Mattaponi. Everybody has spoken on most of
12 the points, but I would like to reiterate a point that
13 Mr. Mills had spoken about. It has to do with the
14 water access dependent activities and about the
15 navigation of the river at Scotland landing where the
16 intake structure is going to be placed. I don't think
17 this is something that has been addressed: Whether or
18 not there are going to be boating restrictions at
19 Scotland landing at the intake structure. Obviously,
20 during construction as construction barge is placed
21 there, there is going to be a need for boating
22 restrictions. This plays into the watermen's issues
23 that Mr. Place also addressed. If there are no
24 restrictions after construction, how do we protect
25 those streams from damage from other people? I look

1 at the river as a highway. On that highway, on that
2 river, you have many, many vehicles. Anything from
3 canoes, kayaks, jet skis, tug boats. There is quite a
4 bit of barge traffic.

5 At the VMRC hearing, the applicant gave detailed
6 drawings of the Scotland landing area stating that
7 there was from shore to shore from King William to
8 King and Queen 500 yards. 500 yards is less than two
9 football fields. There is also a large vegetative
10 wetlands area which restricts that navigation. They
11 claim that, it was claimed that it was the point of
12 intake, to be put there because of that bend in the
13 river. Once again you heard from many people that the
14 scientists have said it is the worst possible place in
15 the worst possible river, but not just for the shad
16 but also for navigation and for water dependent
17 activities. That's one of the concerns that I feel
18 have not been addressed at all by the applicant:
19 Whether or not navigation is going to be affected not
20 only for those jet skis, canoes, kayaks, tug boats,
21 and barges, other activities of commercial fishermen,
22 other commercial as Mr. Mills addressed, heritage type
23 activities from both King William and King and Queen
24 Counties. I give up my time and would like you to
25 consider that.

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1 MS. IRONS: Thank you. Ron Hachey.

2 MR. HACHEY: My name is Ron Hachey. I serve as
3 the County Administrator in King and Queen County. I
4 am here to speak on behalf of the King and Queen
5 Board of Supervisors. King and Queen County is an
6 active member of the Middle Peninsula Chesapeake Bay
7 Public Access Authority. The Access Authority is
8 working closely with DEQ's coastal programs and
9 proactively protecting water quality and increasing
10 public access to pristine waterways in the middle
11 peninsula. Keeping this in mind, King and Queen
12 County is asking the DEQ how the proposed project can
13 be considered consistent with coastal resources
14 management program regulations when it will change
15 water salinity in the Mattaponi River, change the
16 future of irrigation rights for King and Queen
17 farmers, prevent the issuance of waste water discharge
18 permits for future King and Queen development within
19 the 10-mile limit discharge zone around the proposed
20 water intake pipe in our only waterfront community
21 known as Walkerton, the 420 acres of naturally
22 occurring wetlands in neighboring King William County,
23 which may impair wildlife habitat in the greater
24 middle peninsula area.

25 On my board's behalf, I urgently and respectfully

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1 request that the DEQ find this proposed scheduled
2 project not only inconsistent with sound environmental
3 standards, but also inconsistent with Coastal
4 Resources Management Program policies. Thank you for
5 your serious consideration of King and
6 Queen's concerns.

7 MS. IRONS: Thank you. Phillip Bradley.

8 MR. BRADLEY: Good evening. My name is Phillip
9 Bradley. In lieu of a long elaborate speech, I want
10 to submit my statement.

11 MS. IRONS: Thank you.

12 MR. BRADLEY: I would just like to bring to DEQ's
13 attention that since the application process has
14 commenced, the U.S. Government has added another
15 carcinogen to the list of known carcinogens. To be a
16 carcinogen, it has to be scientifically proven to
17 cause cancer. As anybody who lives in King
18 William and King and Queen County they would know that
19 this is sawdust. Sawdust, wood dust is a carcinogen.

20 If you travel the area of King William County, you
21 will see saw dust all over the County. The bridges
22 that cross the Mattaponi are contaminated with
23 sawdust. In bringing this to your attention, I
24 have seen nothing in the application that address the
25 carcinogens, what would happen if the Mattaponi River

1 is disturbed, what happens if the reservoir is built
2 and carcinogens such as sawdust, decomposing leaves,
3 falling into the reservoir? The question that I would
4 ask DEQ to consider is whether or not, before any kind
5 of permit be issued, that the EPA be called in to set
6 standards for sawdust contained in drinking water to
7 be in compliance with the Drinking Water Act.

8 I don't want to take too much of your time, but
9 my full comments are in my letter. Thank you.

10 MS. IRONS: Thank you. John Danron.

11 MR. DANRON: My name is Dr. John Danron. I
12 represent no one but myself. I live in Newport News,
13 Virginia. My first concern is the public notification
14 participation. One of the requirements of the Coastal
15 Zone Management Act of 1972, is that at the time of
16 the announcement of the public, all
17 materials pertinent including documents, studies and
18 other data must be made available to the public for
19 review and study. I contend that part of that record
20 would be the environmental impact statement that was
21 done at great cost and over a long period of time to
22 evaluate this study.

23 I have been trying to get a copy of that, and
24 this week I went to the Newport News library, Hampton
25 library, Poquoson library, your county library; no one

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1 had it. Two of them had the old Record of Decision.
2 One had the latest Record of Decision. So there is
3 no way for a citizen to reasonably educate himself as
4 background for this kind of hearing because the
5 material is not available. That might not be your
6 specific responsibility, I understand, but it needs to
7 be the responsibility of the proponent to see those
8 things out there.

9 Second is a concern for cumulative effects. I am
10 considered to be somewhat of a NEPA expert, and
11 cumulative effects is one of the requirements of the
12 Council of Environmental Quality, which is part of the
13 Executive branch of the government. The RODs I have
14 seen, the 2001 Record of Decision as well as the 2004
15 Record of Decision. The 2001 Record of Decision did
16 consider cumulative effects. It wasn't extensive, but
17 it was a consideration of it at least. In the second
18 ROD, really a pitiful example of a Record of Decision
19 compared with the one done in 2001, there is no
20 discussion that I could find of cumulative effects,
21 and, again, this is a requirement.

22 Last, I think we ought to remember in balance to
23 the three Colonels who represented themselves here and
24 their point of view, that it was Colonel Carol who had
25 the responsibility in the Norfolk District to evaluate

1 the environmental impact statement. His folks
2 produced a very extensive and excellent Record of
3 Decision on that document. And they were the-- it was
4 his responsibility to determine that and I would hope
5 that you would respect the position of a colleague
6 that had that responsibility in a difficult time, as
7 opposed to the second Record of Decision in 2004,
8 which came down from the North Atlantic Division after
9 it was referred by Governor Gilmore over signature of
10 General Rhoads, which was an inadequate document. I
11 urge you not to grant consistency certification of
12 this project.

13 MS. IRONS: Thank you.

14 MR. SHOFFNER: My name is Andrew Shoffner, and I
15 am speaking as a citizen. I will try to keep this
16 very brief in the interest of time.

17 I looked through the consistency certification
18 document that we're talking about tonight. I think I
19 understood everything that was in it. The problem I
20 had was that there were a lot of things that I would
21 like to know that were not in it. In particular, the
22 final wetlands mitigation plan to create or restore
23 vegetative wetlands to a minimum of two to one ratio
24 etc. etc. Wasn't detailed and couldn't find anywhere
25 else a copy of such a final wetlands mitigation plan

1 and a speaker said that does not yet exist.

2 So, as a member of the public, I would like to
3 urge that the State extend the public comment period
4 until the public has sufficient information to
5 evaluate whether this project is indeed consistent
6 with environmental agencies.

7 MS. IRONS: Thank you. Kitty Cox.

8 MS. COX: My name is Kitty Cox. I have lived in
9 King William County for 27 years and I speak for my
10 family and myself. We do not believe the project is
11 consistent with the Virginia Coastal Resources
12 Management Program. If it is built, this project will
13 do more to damage the environment in Virginia than any
14 project in recent memory. Not only will it alter the
15 ecosystem of the Mattaponi River forever, but the
16 location of the intake pipe will jeopardize the
17 struggling remnants of the shad fishery and perhaps
18 other fisheries in the Chesapeake Bay as well. The
19 project would also destroy the ecosystem of Cohoke
20 Creek with the largest destruction of the wetlands in
21 the mid Atlantic region since the passage of the Clean
22 Water Act.

23 The City's inadequate, piece meal, mitigation
24 plan which would take land in several counties from
25 unwilling landowners by eminent domain and try to

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1 create wetlands cannot begin to replace the impact to
2 the wetland ecosystem of Cohoke Creek. Not only will
3 the project do irreparable harm to the environment,
4 but it would violate the treaty rights and contribute
5 to the demise of the Mattaponi Indian whose
6 culture and religion are inextricably intertwined with
7 the river and the shad run. It doesn't need to
8 happen.

9 Several independent studies that prove that
10 Newport News doesn't need the amount of water they
11 claim and that there are less environmentally damaging
12 means of getting water than destroying one of the last
13 free flowing rivers on the East Coast and over 400
14 acres of wetland. We know that this project isn't so
15 much about the need for water as it is for about
16 control of cheap water for future economic gain in a
17 locality that is far removed from the area that will
18 be affected by the project. This project will allow
19 developers in the lower peninsula to pave over what
20 little land is left there contributing to more people,
21 more run-off, more pollution, and more degradation of
22 the Chesapeake Bay's ecosystem.

23 What happened to the Chesapeake Bay 2003
24 agreement and Virginia's vow to help clean up the bay
25 and not to impair it further? Much has changed since

1 DEQ issued the VWP permit for this project in 1997. We
2 have much more information about the tremendous impact
3 for the project on a very complex river ecosystem and
4 a warning from them that much more needs to be known
5 before this project is allowed to go forward.

6 The two agencies that have studied the facts
7 about the project in depth, the Corps of Engineers,
8 and the MRC have both turned the project down only to
9 be overturned by big money and extreme political
10 pressure. If the reservoir is built, it will be one
11 of the greatest environmental and cultural
12 tragedies in the history of the Commonwealth and a
13 tribute to big money and power politics. With this
14 project and its enormous impact on our rivers and the
15 bay, we are at a turning point in Virginia. Do we
16 continue to destroy river, land and forest that make
17 our State unique or do we call a halt to unneeded
18 destruction and try to preserve the environmental
19 treasures that we have left for future generations?

20 Once the Mattaponi River is altered and Cohoke
21 Creek is gone, we can never get them back. We believe
22 this unneeded, destructive project is inconsistent
23 with Virginia Coastal Resources Management Program.
24 We urge DEQ to take a stand against the reservoir and
25 for Virginia's environment now.

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1 MS. IRONS: We have--

2 MR. MURPHY: --three minutes left.

3 MR. WORTHINGTON: My name is
4 Bradford Worthington, I'm a Virginia citizen and I
5 grew up in Richmond. I have a B.S. in Chemistry from
6 Virginia Military Institute. When I moved back to
7 Virginia in the mid 1990s, my younger brother,
8 Abraham, was involved in this battle, and the reason
9 why my brother told me he is opposed to this reservoir
10 was his support for the Mattaponi and the argument
11 that those of us who came to this continent from other
12 places should not impose further immoral actions upon
13 the people who are living here when we arrived. Those
14 of you who know the history know the early settlement
15 would have starved to death if our Native American
16 brothers not shown them how to grow corn and cultivate
17 the crops and survive in this hostile environment.
18 Point number one I think it's immoral to go forth with
19 this project.

20 Secondly, as a scientist, I got interested in
21 some of the technical aspects of this and reviewed
22 some of the environmental documents that I was able to
23 obtain through the Sierra Club.

24 In the section that basically says that the Water
25 Authority has to keep ahead of need. In other words,

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1 they have to build to protect and be ahead of the
2 anticipated population and Newport News has run up
3 against this law previously. They've built one or
4 more. I know they've built at least one. I don't
5 know of any technical or scientific reason why Newport
6 News can't continue to use desalination technology to
7 meet their needs. As other speakers have alluded, the
8 desal technology today is both technically and
9 economically superior to the desal technology that
10 existed back when Newport News first submit its
11 application. It's obvious to me that while Newport
12 News could and should use an alternative technology
13 such as desal they just choose not to.

14 Point three. In the course of my research and
15 investigation and reading documents and such, I've
16 learned something interesting. The person or persons
17 who signed and submitted the Newport News USACE, Army
18 Corps of Engineers' application apparently failed to
19 comply with federal law with regard to the information
20 contained or not contained in the application. I've
21 been told by a reliable source that Newport News
22 failed to answer one or more questions on the permit
23 in a truthful manner. My source was an employee
24 involved in the application review process.

25 Specifically, the apparent violation of federal

1 law is omission of material information that by law
2 should have been provided on the permit application.
3 Those of you who are lawyers know the word 'material'
4 has a definition in law. Basically it means, as I
5 understand it, information that makes a difference to
6 the process at hand. It's not nickel and dime
7 information.

8 On the federal application form itself, which I
9 downloaded from the web, the US Army Corps of
10 Engineers form, it stated that omission of such
11 material constitutes a felony under federal law.
12 Omission of this material information kept the staff
13 of the US Army Corps of Engineers in the dark and led
14 the US Army Corps of Engineers staff to come to an
15 erroneous conclusion in the early critical phase of
16 the application and review process.

17 I am in the process of acquiring copies of the
18 Newport News application and if the allegations of my
19 source are substantiated by the document, I will file
20 a federal criminal complaint with the U.S. Attorney.
21 Thank you, very much.

22 NOTE: An announcement is made of registered
23 speakers who did not speak.

24 MS. IRONS: Ann Calley, Jerry Horner, Thomas
25 Mainor, Carrie Rouse, Elizabeth Rogers, Cathy Adams,

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1 Ann Brummer, Dori Chappell, and Ann Porter.

2 We will begin with the other comments and thank
3 you.

4 MS. MARTIN: My name is Caroline Martin. For the
5 past 27 years, I've worked with the executive vice
6 president for Riverside Health System. Tonight I am
7 here to chair the Peninsula Citizens for Fair Play on
8 Water. It's a mouthful, but every word is important.

9 We are citizens who live and/or work on the
10 Peninsula and drink water. In short, we have a vital
11 stake in the King William reservoir. It represents
12 the best long term solution to our water supply need.
13 A need that right now is in a deficit as defined by
14 the Virginia Department of Health. The Virginia
15 Department suggests that unless we significantly
16 increase our water supply, we will face an
17 increasing number of periodic shortages including
18 mandatory restrictions beginning in 2015 during
19 periods of drought.

20 We are a vital community. We have great quality
21 of life. That's why our population continues to
22 grow. It is critical that we have sufficient water to
23 sustain our current residents and newcomers.

24 I know at first hand what water means to modern
25 health care. I lived at Riverside Regional Medical

1 Center during a drought where we had rationing and
2 tried to take the same high quality of care of our
3 patients. And then, again, during Isabel, we were
4 asked to manage the care for our sickest without
5 utilizing normal water supply until it could be
6 determined that it was potable water.

7 What we are asking as peninsula citizens is
8 simply fair play. A tiny fraction of the water
9 coming down the Mattaponi River. On a typical day the
10 amount we would withdraw is around 3 percent. We
11 believe that the King William reservoir represents the
12 best solution to those needs from an environmental
13 standpoint. We agreed with the environmental impact
14 study by the Army Corps of Engineers when it founded
15 to be, quote, the least environmentally damaging
16 practical alternative, which meets the validated
17 purpose and need, end of quote. There are a lot of
18 people who agree with FPH20. It has nearly 200
19 members, citizens who have taken time to familiarize
20 themselves for the future needs and solution. We
21 represent more than 2000 people who have signed
22 letters, e-mail and postcards to various state
23 agencies in support of this project. We also
24 represent a host of citizen business organizations
25 that take positions on vital public policy issues like

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1 this. In sum, we represent thousands of households
2 and businesses, real people and real jobs, all of them
3 located within the six localities that make up the
4 Regional Raw Water Study Group.

5 We do not question the sincerity of those in the
6 environmental organizations and others who oppose the
7 project. What we do say is this: Our need is so great
8 and this solution is so right, we have gone far above
9 and beyond what any similar project has ever done to
10 avoid any environmental damage and to minimize and
11 mitigate those impacts that could not be avoided.
12 Those efforts have made a good essential project even
13 better. In future years the King William reservoir
14 experience will be viewed as a model of public policy
15 for water supply projects of Virginia. If you think
16 that's an exaggeration consider this: This project has
17 already been the subject of seven public hearings by
18 state agencies alone before tonight's hearing. That
19 does not count local or federal government hearings,
20 and this project has benefited from citizen input.

21 The Army Corps of Engineers has already had 474
22 days of public comment period. On the State level,
23 the State Water Control Board has held 147 days of
24 public comment. The VMRC commission has had 201 days
25 of public comment, and DEQ has held 68 days of public

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1 comments on the Coastal Zone Management Certification
2 and Compliance in 2001 and 2002. That's a total 460
3 days of public comments hearings by state agencies
4 alone. It's a total of 890 days counting public
5 hearings by state and federal and environmental
6 agencies. The public has been heard often and at
7 length, and the public has been served by improvement
8 over the years in the project.

9 The ultimate outcome of these hearings and public
10 comments period has always been the same. The King
11 William reservoir has been approved by all the
12 environmental permits it needs. All of them. It
13 hasn't been pretty or easy, but in the end every
14 agency has taken a careful look at it, weighed its
15 benefits and mitigation against the impact and it has
16 been approved.

17 Now we urge DEQ to take the final step and
18 certify that this project does, in fact, comply with
19 policy of the State Environmental Coastal Zone
20 Management Program. With that certification, the Army
21 Corps of Engineers will be able to take final action
22 on the federal permit of this needed water supply
23 project so that it can be built before we run out of
24 water in a drought.

25 As I mentioned, there are many other

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1 representatives and now I would like to ask that the
2 Williamsburg Chamber of Commerce and Peninsula Chamber
3 of Commerce chiefs be allowed to speak. Thank you.

4 MS. IRONS: Mr. Robert Hershberger.

5 MR. HERSHBERGER: Thank you. Good evening. I'm
6 Bob Hershberger. I'm the executive vice president of
7 the Williamsburg area Chamber of Commerce. A position
8 I've had the pleasure of serving for the past 18
9 years. We represent nearly 900 businesses throughout
10 the Williamsburg area. During the past 18 years that
11 I've been in this position, our area has experienced
12 significant growth in both residential and commercial
13 sectors. This area is appealing to both, but without
14 a solution from long-term water needs, individuals and
15 their companies will begin to look at other markets to
16 relocate.

17 Previous hearings have articulated the need for
18 the King William reservoir. Our past seven chamber
19 presidents have expressed their support throughout the
20 process at public hearings of their support for the
21 reservoir, and with the start of our new year earlier
22 this month, number eight adds his name to that list.

23 How much longer must we wait? How much longer
24 must we respond to the constant concerns of area
25 visitors, residents, and businesses before a solution

1 to this long-term water need? As Ms. Martin said,
2 there has been sufficient and enough study and
3 dialogue. Let's just do it. Thank you, very much.

4 MR. HOEY: Ladies and gentlemen, I'm Clyde Hoey,
5 president and CEO of the Virginia Peninsula Chamber of
6 Commerce. Our organization has been working with and
7 been involved in the developments of this project from
8 its inception. We've followed it. We've studied the
9 science. We feel that we know the issues, but more
10 importantly we feel that it has been properly aired by
11 all the agencies in the State.

12 I represent a concern that speaks with and for
13 2500 businesses on the Virginia peninsula, who employ
14 over 112,354 employees. They are all primarily on
15 the lower peninsula. We have for a long time been a
16 supporter of the King William reservoir project. We
17 believe it's in their best interest that this project
18 go forward.

19 It was at the direction of the EPA and the U.S.
20 Army Corps of Engineers that we go away from a project
21 on the lower peninsula and build a larger project.
22 That was some 17, 18 years ago. We have worked with
23 these agencies in the development of bringing this
24 project to bear. The Virginia Health Department
25 expresses concerns over the Peninsula's need for

1 quality potable water to meet the future demands of
2 its citizens. Newport News Water Works, which will
3 manage the proposed reservoir has a proven track
4 record in reservoir management that dates back over a
5 hundred years. Their ability to mitigate wetlands and
6 successfully manage water assets has been well proven
7 and documented.

8 When Governor Warner took office, he took the
9 position that he wanted to let science determine the
10 project. Science has been heard. The agencies have
11 had their opportunity and it's time now to move
12 forward.

13 Persons that are neither residents nor tax payers
14 of Virginia have inserted many claims and conjectures
15 with regard to this issue. This is a Virginia project
16 for Virginia tax payers. This is our future. It has
17 a great impact on our future economic development
18 capabilities and the health of our existing
19 businesses. We urge that you go ahead and admit this
20 compliance letter that is needed for us to continue
21 this project. Thank you, very much.

22 MS. IRONS: Thank you.

23 MR. LANDRUM: Thank you for this opportunity to
24 speak in front of this public hearing today. My name
25 is Andy Landrum and I am on the Peninsula Citizens for

1 Fair Play on Water. I've been a peninsula resident
2 for over 50 years now and I strongly believe that the
3 King William reservoir project is fully consistent
4 with all the requirements of the Coastal Zone
5 Management Act. In the interest of brevity, I will
6 restrict my comments to two issues. The first one is
7 that I have been following this project since its
8 inception as well. Newport News has devoted over 17
9 years and \$20 million developing the King William
10 reservoir project. They have spent millions of
11 dollars hiring nationally and internationally
12 recognized environmental professionals. They have
13 developed a comprehensive plan that has been accepted
14 by all state and federal environmental agencies and
15 regulators that not only provide for environmental
16 protection well over and above all the previous
17 standard for these types of projects, but also
18 provides for the safe and adequate supply of drinking
19 water to over 600,000 people on the Virginia peninsula
20 for the next 50 years. They have truly developed a
21 win-win solution that carefully balances the public
22 needs with environmental protection.

23 The second point I feel very strongly about.
24 This project is crucial to the economic viability of
25 the peninsula. The wages that we have on the

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1 peninsula are already well below State averages and
2 national averages. In order for the peninsula to
3 remain competitive with the rest of Virginia and with
4 the country our ability to remain competitive depends
5 on a adequate supply of drinking water. Look at all
6 the developed areas along the I64 and I95 corridors,
7 and the lower peninsula is the only developed area
8 that does not have a secure long-term supply of
9 drinking water. That will affect and impact our
10 ability to be competitive.

11 Once again, to summarize, the City has developed
12 an excellent plan that balances the need for
13 environmental protection and the need of our
14 residents. This is important not only to us that are
15 now working, but also to our kids and our kids' kids.

16 MS. IRONS: Thank you. Karen Rice.

17 MS. RICE: Good evening. My name is Karen Rice.
18 I appreciate the opportunity to speak with you this
19 evening. I'm a 15 year resident of York County. I'm
20 a wife, a mother, a full-time ODU student, and I have
21 been following the progress of this reservoir project
22 for 15 years. I am dismayed that the facts of the
23 reservoir's location are still not fully understood,
24 and I am disappointed that a lot of people that were
25 here speaking earlier still seem to think that the

1 Mattaponi River is going to be dammed up.

2 The Mattaponi was never involved, was never going
3 to be dammed; it was always Cohoke Creek. Cohoke
4 Creek itself has been utilized on and off since
5 colonial times as a water source for mills. It's been
6 a mill pond on and off for over 300 years. I am also
7 disappointed that, although it is late, those of us
8 who are for the project and think that it does fit
9 your coastal water resource requirement, I'm
10 disappointed that those who spoke earlier did not stay
11 in order to give the rest of us a full audience and
12 equal time.

13 I tried to come up with a top ten list and I came
14 up with 18. As far as destroying the shad population,
15 the shad has been on moratorium in Virginia rivers for
16 a long time, but had not been on moratorium on coastal
17 areas offshore. That has now happened. And time
18 needs to be given for the shad population to rebound
19 from that commercial fishery being stopped.

20 As far as underwater historic property, those are
21 supposed to be excavated and donated to a museum.
22 They are not to be flooded. Delegate Morgan has
23 refused to this day to acknowledge the fact that the
24 Norfolk District recommendation has been reversed. It
25 is no longer valid. Representative Jo Ann Davis has

1 consistently ignored the evidence presented to her
2 that the project is not within the treaty limits. All
3 construction for this project will be outside the
4 three mile limit.

5 Dr. Custalow's error that was stated here in
6 front of you tonight was that the Mattaponi River flow
7 will be blocked. That's not true. Cohoke Creek will
8 be re-dammed. Wetlands mitigation -- He says it can't
9 happen, that it doesn't work. It does work. It
10 doesn't work over night, but if given time, areas that
11 have been ditched and dried that have previously been
12 wetlands can return to their original state. 1500
13 acre of forested wetlands -- the wetlands in Cohoke
14 Creek is not a pristine wetlands. It is not something
15 that has never been used in the past. The current
16 trees and the forested area are recent only since the
17 most recent mill pond dam was breeched and not
18 rebuilt.

19 As far as environmentally, I'm asking isn't it
20 more environmentally safe to contain development
21 within developed areas instead of having everyone
22 spread out and each person who spreads out have their
23 very own well and their very septic tank ?

24 Destruction of wetlands and their effectiveness
25 of filtering run-off. Cohoke Creek has a very small

1 watershed area. That is the number one reason why
2 this is the best choice. There is very little area to
3 run off into Cohoke Creek.

4 As far as not having enough public information
5 available - this project I have been watching for 15
6 years, it's been in existence for more than 17 years.
7 The information has been released and updated
8 regularly. As the previous speaker said, there have
9 been myriad public comment periods.

10 I didn't quite understand the carcinogen argument
11 the gentleman brought before you. Yes, there is
12 sawdust and, yes, leaves are going to fall into the
13 reservoir, but leaves fall in every reservoir.

14 The point I want to make tonight is that
15 Virginia river waters belong to the Commonwealth of
16 Virginia, they do not belong to any individual person,
17 landowner, visitor, indigenous people. The waters
18 belong to the State of Virginia and the State of
19 Virginia, the Commonwealth has the final say on who is
20 able to use those waters.

21 As far as delaying the permit decision for
22 further additional public involvement - as was stated
23 earlier, seven public hearings have been held as
24 required. Public comment periods have been enforced
25 as legislated. Public notifications and the current

1 decision or the current recommendation by the Corps of
2 Engineers is available on the Internet, it's on the
3 North Atlantic site.

4 I didn't quite understand the gentleman who was
5 talking about that he didn't want the reservoir, he
6 was from King and Queen, because he wanted to reserve
7 the rights for King and Queen County to be able to
8 build a sewer plant and have an outfall. That sounds
9 like an even less environmentally wonderful project.

10 I think I'm running out of the time here.
11 Regardless, I did pick up this list, fact sheet. It
12 talks about the enforceable policy of DEQ, all
13 advisory policy and all the planning protection
14 policy. It appears to me that within the VMRC permit,
15 the State of Virginia permit, the Health Department
16 permit, and the final environmental impact statement,
17 the memorandums of agreement and the Corps of
18 Engineers permit that all of the issues that the DEQ
19 has posted to be decided on have been covered and will
20 be covered in our permanent public record.

21 I urge you today to please agree that this plan,
22 and it does truly more than any other project I have
23 seen, adhere to the requirement of DEQ. Thank you.

24 MS. IRONS: This concludes the list of the persons
25 on the list to speak. Is there anyone else present at

1 this time who wishes to enter his or her comments into
2 the record? (No response.)

3 For the record, I regret that all the people who
4 signed up to speak didn't have the opportunity to do
5 so because of time constraints.

6 I hereby declare this public hearing adjourned at
7 9:30 p.m. October 20. Thank you for attending this
8 evening and providing your comments.

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CERTIFICATE OF COURT REPORTER

I, Kathleen Chancey, hereby certify that I was the court reporter in the meeting of the King William Reservoir Public Hearing at the time of the meeting herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 15th day of November 2004.

Kathleen Chancey, Court Reporter